IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10577 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRAVINCHANDRA G PATEL

Versus

SHANKERBHAI VITTHALDAS PATEL

Appearance:

1. Special Civil Application No. 10577 of 2001

Mr. for GIRISH PATEL ASSOC for Petitioners No. 1-2

MR AJ YAGNIK for Petitioners No. 1-2

MR MANOJ SHRIMALI for Respondent No. 1 to 6.

Ms. D.S. Pandit, AGP for Respondents No. 7-9

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/11/2001

ORAL JUDGEMENT

Rule. Service of which is waived by the learned

advocates for the other side. Heard Mr. Yagnik learned advocate for the petitioners; Mr. Manoj Shrimali, learned advocate for respondents no.1 to 6 on caveat and Ms. Pandit, learned AGP for respondents no.7 and 9.

Leave to delete respondent No. 8 is granted.

The facts of the present petition, in short, are to the effect that the land in question was sold to the petitioners herein by sale deed dated 8.8.1998 bearing no. 1634 by Shri Mahendrakumar C. Shah and legal heirs of Shri Amarsinh R. Chavda and thus the petitioners became the owners of the land admeasuring about 2118.75 sq. mtrs. in survey no. 924/1 (Paiki) at Mouje khansa, Taluka Visnagar in district Mehsana that once was the margin land of the Jay Ambenagar COOP. Housing Society Ltd. After purchasing the land in question, the petitioners put up a plan for construction of small center on the said land which was approved on 26th November, 1999 by the Deputy Planner of the Mehsana District. However, due to the unauthorized encroachment of the respondents no.1 to 6 herein on the land in question, the petitioners got the same removed after following due process of law. As a counter blast, the respondent no.1 to 6 preferred civil suit in the court of the Civil Judge, S.D., at Visnagar which is still pending wherein the civil court has granted the interim stay against the petitioners which is operating against the petitioners. Learned advocate Mr. Yagnik has made a clear statement before this court that the civil court has granted status quo against the petitioners. However, the respondents have preferred revision application no. 5 of 1999 wherein the Deputy Secretary (appeals) revenue department, Government of Gujarat has passed order dated 18th January, 2000 under section 211 of the Bombay Land Revenue Code by allowing the revision in part against the petitioners and, therefore, the petitioners have filed the present petition challenging the said order dated 18th January, 2000 passed in revision application No. 5 of 1999 by the Deputy Secretary (Appeals) Revenue Department, Government of Gujarat.

Revision Application no. 5 of 1999 was filed by the respondent no. 1 to 6 herein challenging the orders dated 11.11.1986 passed by the District Panchayat in favour of the petitioners herein. The revisional authority has come to the conclusion that the challenge made by the present respondents against the order dated 11.11.1986 cannot be entertained because the said revision was filed after the period of about more than fourteen years and therefore, on the basis of such

conclusion, the revision application preferred by the respondents no.1 to 6 herein was rejected by the revisional authority. However, the revisional authority has granted relief in favour of the respondents herein in respect of the common plot of the land in question. Learned advocate Mr. Yagnik has submitted that once the revision application is rejected by the revisional authority, then, the revisional authority is not having jurisdiction to pass any further order and no relief can be granted. He has submitted that the orders passed by the District Panchayat, Mehsana dated 11.11.1986 have been fully complied with and there was no need or necessity to issue any such directions in respect of the common plot. He has submitted that such directions were beyond the scope of authority and jurisdiction. He has submitted that in the civil suit filed before the civil court by respondents no.1 to 6 herein against the present petitioners, the Court of learned Civil Judge, S.D., Mehsana has granted stay which is operating against the petitioners herein and, therefore, in view of these facts, the revisional authority ought not to have issued any directions in respect of the common plot of the land in question while rejecting the revision application preferred by the respondents no.1 to 6 herein. In view of these facts, he has submitted that the order passed by the revisional authority dated 18th January, 2000 is required to be quashed and set aside in so far as it relates to the common plot of the land in question. Learned advocate Mr. Manoj Shrimali appearing for respondent No.1 to 6 has also submitted that in view of the operation of interim stay granted by the civil court against the petitioners herein, the order passed by the revisional authority may be set aside.

Learned Assistant Government Pleader Ms. Pandit appearing for the respondent authorities has supported the order passed by the revisional authority and has submitted that this Court should not interfere with such order passed by the revisional authority.

I have considered the submissions made by the learned advocates for the parties. According to my opinion, once the revisional authority has passed the order rejecting the revisional application against the order dated 11.11.1986, then, the revisional authority ought not to have issued such directions in relation to the common plot of the land in question and such directions issued by the revisional authority are beyond the scope and authority of the revisional authority. Therefore, considering these peculiar facts and circumstances of the case and also considering the fact

that the interim stay issued by the civil court is operating against the petitioners herein, the order dated 18th January, 2000 is required to be quashed and set aside in so far as it relates to the directions in respect of the common plot of 750 sq. mtrs. of the land in question.

In the result, present petition is allowed. The impugned order dated 18th January, 2000 passed by the revisional authority in revision application no. 5 of 1999 is hereby quashed and set aside in so far as it relates to the directions in respect of the common plot of 750 sq. mtrs. of the land in question. Rule is made absolute in terms indicated hereinabove with no order as to costs. DSP Today.

7.11.2001. (H.K. Rathod,J.)
Vyas